

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY ZONING MAP, AND ADOPTING FINDINGS, CONCLUSIONS AND CONDITIONS FOR PROPERTY LOCATED AT 210 CLOVER RIDGE ROAD NE (AN-01-11 and ZC-02-11).

WHEREAS, the Albany Planning Commission recommended approval of the annexation and the proposed Zoning Map amendment following a public hearing on January 17, 2012, for City of Albany File Nos. AN-01-11 and ZC-02-11;

WHEREAS, the Albany City Council held a public hearing, deliberated and approved the concurrent applications on February 8, 2012, at this Council meeting.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The property affected by the Annexation and Zoning Map amendment is a single parcel of approximately 1.5 acres. A legal description and map for the area is attached as Ordinance Exhibit A and Ordinance Exhibit B, respectively.

Section 2: The Zoning Map designation of the property identified in the legal description in Ordinance Exhibit A is hereby amended from Linn County UGM-20 (Urban Growth Management – 20 acre minimum lot size) to City of Albany RM (Residential Medium Density).

Section 3: The Findings of Fact, Conclusions of Law, and Conditions in the Staff Report attached as Ordinance Exhibit C, are hereby adopted in support of this decision.

Section 4: A copy of the map showing the amendments to the Zoning Map shall be filed in the office of the Albany City Recorder and the changes shall be made on the official City of Albany Zoning Map upon annexation and passage of this ordinance on second reading.

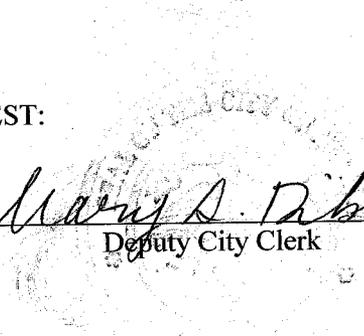
Section 5: A copy of the legal description of the affected properties and the map showing the amendment to the Zoning Map shall be filed with the Linn County Assessor's Office within 90 days after the effective date of this ordinance. This Zoning Map amendment will only take effect if the question of annexation for the subject property is approved by the voters on the May 15, 2012, ballot.

Passed by Council: Feb 8, 2012

Approved by Mayor: Feb 8, 2012

Effective Date: March 9, 2012

ATTEST:


Mary A. Dibble
Deputy City Clerk


Mayor

**ORDINANCE EXHIBIT A
RESOLUTION EXHIBIT A
LEGAL DESCRIPTION
FILES AN-01-11/ZC-02-11**

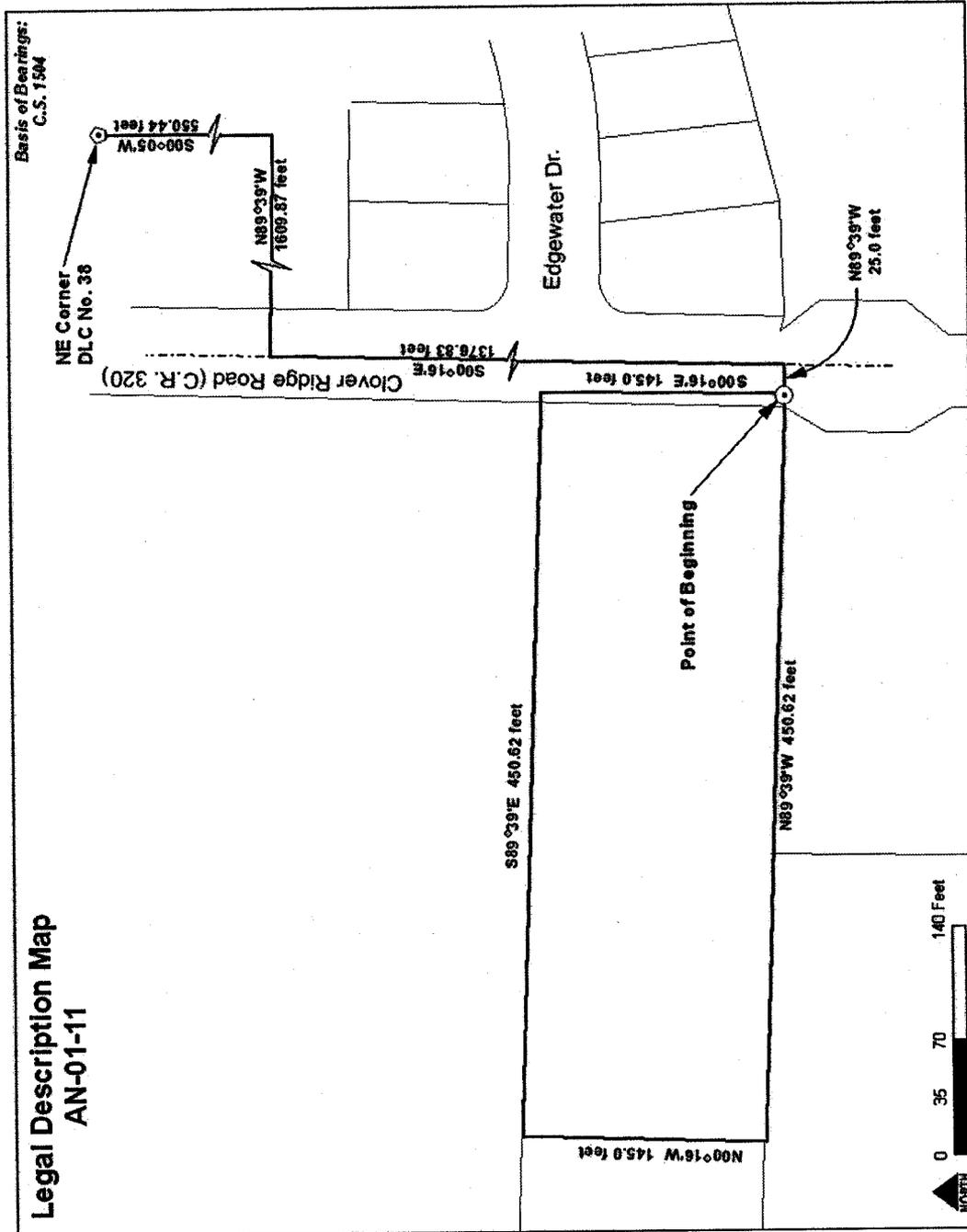
A tract of land located in the Northeast one-quarter of Section 4 in Township 11 South, Range 3 West, Willamette Meridian, Linn County, Oregon that is more particularly described as follows:

Beginning at a point on the current city limits boundary of the City of Albany, said point being located South 00°16' West 550.44 feet and North 89°39' West 1609.87 feet and South 00°16' East 1376.83 feet and North 89°39' West 20.0 feet from the Northeast corner of the Robert Houston Donation Land Claim No. 38 in said township and range; thence North 89°39' West 450.62 feet to the southeast corner of that tract described in Linn County Microfilm Deed Records MF293-93; thence North 00°16' West along the east line of said tract a distance of 145.0 feet to the south line of that tract described in Linn County Microfilm Deed Records Volume 164, Page 212, said line also being the existing city limits boundary of the City of Albany; thence South 89°39' East along said south line and said city limits boundary a distance of 450.62 feet to the current city limits boundary of the City of Albany in Clover Ridge Road; thence South 00°16' East along said city limits boundary a distance of 145.0 feet to the Point of Beginning.

Said area containing 1.50 acres, more or less.

ORDINANCE EXHIBIT B
 RESOLUTION EXHIBIT B
 LEGAL DESCRIPTION MAP

AN-01-11/ZC-02-11





Community Development Department

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STAFF REPORT **Annexation and Zoning Map Amendment** **(AN-01-11 and ZC-02-11)**

<u>HEARING BODIES</u>	PLANNING COMMISSION	ALBANY CITY COUNCIL
<u>HEARING DATE</u>	Tuesday, January 17, 2012	Wednesday, February 8, 2012
<u>HEARING TIME</u>	5:15 p.m.	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW	

EXECUTIVE SUMMARY

The property owner is requesting annexation in order to be eligible to construct a church and associated parking on the subject property and the abutting parcel to the north. The parcel is currently developed with one single family house, which is being used as a church office. The City is proposing a concurrent zoning map amendment that, if the annexation is approved, would zone the property RM (Residential – Medium Density). If annexed, the development of a church on the property would require a Conditional Use permit approval. No application for the church development has yet been received by the City.

GENERAL INFORMATION

DATE OF REPORT:	February 1, 2012
FILE:	AN-01-11 and ZC-02-11
TYPE OF APPLICATIONS:	Annexation and Zoning of Property located at 210 Clover Ridge Road NE
REVIEW BODIES:	Planning Commission and City Council
STAFF REPORT PREPARED BY:	Mike Leopard, Infrastructure Analyst
PROPERTY OWNER:	Grace Point Nazarene Church; Don Bergland; Sr. Pastor 210 Clover Ridge Road NE, Albany, OR 97322
APPLICANT:	Annexation: Grace Point Nazarene Church Zoning: City of Albany
ADDRESS/LOCATION:	210 Clover Ridge Road NE; Albany, OR 97322
MAP/TAX LOT:	Linn County Assessor's Map No. 11S-03W-04AC; Tax Lot 703
CURRENT ZONING:	Linn County UGA-UGM-20 (20 acre min.)
TOTAL LAND AREA:	1.50 acres (including right-of-way)
EXISTING LAND USE:	Single-family house being used as a church office
EXISTING COMP PLAN DESIGNATION:	Residential – Medium Density

SURROUNDING ZONING: North: RS-6.5 (Residential Single-Family)
 South: Linn County UGA-UGM-20
 East: RS-6.5 (Residential Single-Family)
 West: Linn County UGA-UGM-20

SURROUNDING USES: Single-family residential on all sides.

PROPOSED ZONING: RM (Residential - Medium Density)

REASON FOR ANNEXATION

The applicants wish to have the subject property annexed to make it eligible for future development of a church and associated parking area.

NOTICE INFORMATION.

On December 23, 2011, notice of the public hearing for this project was mailed to property owners within 300 feet of the subject property. As of the date this staff report was completed, staff had not received any written comments on this project. The subject property was posted with signs on December 23, 2011.

PLANNING COMMISSION RECOMMENDATION

On February 17, 2011, the Albany Planning Commission voted to recommend that the City Council approve the annexation of this property located on Clover Ridge Road NE.

The Planning Commission also recommended that, upon voter approval of the annexation, this same property be given a City zoning designation of RM – Residential Medium Density.

STAFF RECOMMENDATION

Staff agrees with the Planning Commission recommendation.

SUGGESTED COUNCIL ACTION

Passage of the attached ordinance would approve the annexation and change the zoning of the subject property from Linn County UGM-20 to City of Albany RM, if the annexation is approved by the voters. *(Second reading of the ordinance may occur at a subsequent City Council meeting should the annexation be approved by the voters.)*

Passage of the attached resolution that would forward the question of annexation of the property located at 210 Clover Ridge Road NE to the voters on the May 15, 2011, ballot.

FINDINGS AND CONCLUSIONS
ANNEXATION FILE AN-01-11

INTRODUCTION

On January 11, 2006, the City Council adopted modified procedures for voter-approved annexation in the City of Albany. These procedures are detailed in Article 2 of the City of Albany Development Code (ADC 2.090 – 2.140).

Listed below are findings and conclusions that address the review criteria as specified in the Development Code. Review criteria are listed in *bold italics* and are followed by findings and conclusions.

The following abbreviations are used in these findings:

- “ADC” means Albany Development Code, available online (<http://www.cityofalbany.net/commdev/devcode/index.php>) and in the office of the Albany Community Development Department.
- “OAR” means Oregon Administrative Rules, available online (http://www.sos.state.or.us/archives/rules/number_index.html).
- “ORS” means Oregon Revised Statutes, available online (<http://leg.state.or.us/ors/>).

A. ***Eligibility Criteria.*** *The City Council shall determine that property is eligible for annexation based on the following criteria:*

- (a) *The property is contiguous to the existing city limits.*
- (b) *The property is located within the Albany Urban Growth Boundary as established by the Albany Comprehensive Plan.*

FINDINGS OF FACT:

- A1. The subject property is a single parcel of approximately 1.50 acres, and is contiguous to the current city limits along its north, east, and western half of its south property boundaries. It lies within an island of unincorporated territory surrounded by city limits (See Staff Report Attachment A.)
- A2. Plate 1 of the City’s Comprehensive Plan shows the Urban Growth Boundary (UGB). The subject parcel is within the UGB.

CONCLUSION

A1. This criterion is met because the property proposed for annexation is contiguous with the existing city limits and is within the Albany UGB.

B. ***Infrastructure Criteria.*** *The City shall determine that it is timely to annex property based on the following criteria:*

- (a) *An adequate level of urban services and infrastructure is available, or will be made available in a timely manner.*
- (b) *As used in this section:*
 - i. *“Adequate level” means conforms to adopted plans and ordinances.*
 - ii. *“Urban services” means police, fire, and other City-provided services.*
 - iii. *“Infrastructure” means sanitary sewer, water, storm drainage, and streets.*

“Be made available in a timely manner” means that improvements needed for an adequate level of urban services and infrastructure will be provided at the time and place needed to serve the anticipated development. Improvements may be secured by a development agreement, annexation agreement, or other funding mechanism that will place the primary economic burden on the territory proposed for annexation and not on the City of Albany generally.

FINDINGS OF FACT

- B1. City utility maps show that a 12-inch public water main currently exists in Clover Ridge Road NE along the frontage of the subject property. There is also an 8-inch main that is stubbed to the west side of Clover Ridge Road approximately 15 feet north of the subject property’s north boundary. The existing structure on the property is not connected to the public water system, but is served by a private well.
- B2. The applicant’s submittal states:
The existing [structure] on the subject property makes use of a well. Future plans for a church parking lot will require the abandonment of the well. Except for the possibility of a failure of the well, no connection to the water system is anticipated.
- B3. The applicant has agreed to either have the existing building removed from the site, or to connect it to city sanitary sewer facilities. In order to allow time for planning, design and construction of the proposed church development, the applicant is proposing that the existing building will either be removed from the property, or it will be connected to public sewer by December 1, 2014.
- B2. The City’s *Water Facility Plan* (2004) shows no system deficiencies in this area. An existing system of large diameter water mains along Century Drive NE, Knox Butte Road NE, Clover Ridge Road NE, and Bernard Avenue NE/Somerset Avenue NE, covers the recommended facility plan projects for this area.
- B3. City utility maps show that an 8-inch public sanitary sewer main currently exists in Clover Ridge Road NE. There is also an 8-inch main that is stubbed to the west side of Clover Ridge Road at the northeast corner of the subject property. The existing structure on the property is not connected to the public sewer system, but is served by a private septic system.
- B4. The applicant’s submittal states:
The Grace Point Nazarene Church plans to continue to use the building for office purposes and does not intend to connect to the City sewer system upon annexation. It would do so if the septic system was to fail.
Upon annexation, Grace Point Nazarene Church plans to use the subject property for overflow parking facilities for their new church to be constructed on the abutting tax lot to the north. The Church plans to remove the existing office structure when the parking lot is built.
Future plans for a church parking lot would require the removal of the office building and require the abandonment of the existing septic system. Unless the existing septic system was to fail prior to constructing the parking lot, a service connection to the public sewer line will not be needed.
- B5. The City’s *Wastewater Facility Plan* (1998) indicates that there are no system deficiencies downstream of this site.

- B6. Clover Ridge Road NE was improved to City standards by Linn County in 2004. A 15-inch public storm drainage main exists in Clover Ridge Road along the property's frontage. Burkhart Creek (south of the site) and Truax Creek (north of the site) are the main drainage features in this area. Storm drainage facilities in the newly reconstructed Clover Ridge Road NE collect stormwater from the road and some adjacent parcels and carry the runoff to these creeks, or to smaller drainage ways in the area.
- B7. The City's *Storm Drainage Master Plan* (1988) indicates that the subject properties lie entirely within the Burkhart Creek drainage basin. The Plan shows no capacity deficiencies within, adjacent to, or downstream of the subject parcels. The 1988 plan indicates that the main channel of Burkhart Creek is sufficient to carry the 100-year storm flows. Any future development on the subject property will be required to provide a drainage plan to show how stormwater runoff from the site will be collected and properly discharged to the public drainage system. It is likely that any development more extensive than a single-family house or duplex would be required to provide on-site detention of storm water.
- B8. The subject parcel currently has access to Clover Ridge Road NE from a private driveway. Clover Ridge Road is classified minor collector street in Albany's TSP and is improved to City standards with curb and gutter, sidewalks, a travel lane in each direction, on-street striped bike lanes, and storm drainage improvements. The transportation system improvements adjacent to the site conform to Albany's adopted TSP. This portion of the street is under the jurisdiction of the City of Albany. The speed limit is 25 miles per hour.
- B9. Adequate public water flow for fire protection is currently available in this area. Because the subject property is part of a larger existing "island" of unincorporated territory, there are properties on all sides that are currently within the city limits and are being served by the City's Fire Department. In addition, the areas that are not yet within the city limits are served by the Albany Fire Department through a rural fire protection district.
- B10. Because the subject property is part of a larger existing "island" of unincorporated territory, there are properties on all sides that are currently being served by the City's Police Department. Police service to this property would be a logical extension of the current patrol boundaries.

CONCLUSIONS

- B1. This criterion is met because public utilities and transportation system improvements have been made adjacent to the subject property (in Clover Ridge Road NE), and these improvements are adequate to serve future development on the site.
- B2. The applicant is considering removing the existing structure from the subject property to make the parcel available for parking facilities for the proposed church on the adjacent property. However, the applicant wishes to allow for the possibility that the existing building would be used as part of the church development. If the existing building on the property is to be used as part of the proposed church development, then it must be connected to the public sanitary sewer and water systems. In order to allow time for planning, design and construction of the proposed church the applicant is proposing to set a deadline of December 1, 2014 for removal of the building, or its connection to public utilities. The applicant is proposing to provide the City with a promissory note in the amount of the expected System Development Charges for connection to the public sewer and water systems. If the structure has not been removed from the property, or connected to city utilities before the December 1, 2014 deadline, then the City will call on the promissory note to pay the applicant's System Development Charges and the building must be connected to city utilities. (see Staff Report Attachment E – Annexation Agreement)
- B3. This criterion is met because fire service is already provided to this parcel by the City through a fire district, and public water facilities are in place to serve the area. The subject property is within an "island" and is surrounded by properties that are in the city limits. Properties surrounding this site are

served by the City's fire and police departments, so the addition of this parcel to the city limits would be a logical extension of the current service boundaries.

C. Planning Criteria. The City shall determine that adequate planning has occurred based on the following criterion:

Sufficient planning and engineering data have been provided, and necessary studies and reviews have been completed such that there are no significant unresolved issues regarding appropriate Comprehensive Plan and implementing ordinances. Examples of needed studies may include public infrastructure plans, buildable lands inventories, area refinement plans, or any task in an approved work program for Periodic Review.

FINDINGS OF FACT

- C1. This annexation request is for a 1.50-acre parcel. The Comprehensive Plan Map designation for this property is Medium Density Residential (see Staff Report Attachment B). The City is proposing a concurrent zone change for the subject property that would result in a City of Albany zoning designation of RM (Residential – Medium Density). This zoning designation would match that of adjacent properties that lie within the city limits (see Staff Report Attachment C). It is anticipated that the properties to the west and to the south that are currently in the County would also be zoned RM when they are annexed.
- C2. Public infrastructure facility plans that deal with this area include: *Water Facility Plan (2004); Wastewater Facility Plan (1998); Storm Drainage Master Plan (1988); Transportation System Plan (2010).*
- C3. Recent work done as part of the City's Periodic Review has resulted in a change to the Comprehensive Plan designation of the area along Clover Ridge Road south of Dunlap Avenue from Low Density Residential to Medium Density Residential.
- C4. The Local Wetlands Inventory for the East I-5 area (1997) and the recent Goal 5 work show no wetlands on this parcel. The Goal 5 natural resources study does indicate that a small sliver of the southeast corner of the property is within the Riparian Corridor overlay (See Staff Report Attachment D).

CONCLUSIONS

- C1. This criterion is met because of the information provided in the various studies and plans covering this area.

D. Reasonableness. The City Council shall determine that the proposed annexation is reasonable.

FINDINGS OF FACT

- D1. The subject parcel lies within an existing "island" of unincorporated territory surrounded by the city limits.
- D2. City sewer and water facilities are available within the Clover Ridge Road NE right-of-way.

CONCLUSIONS

- D1. The proposed annexation would decrease the total size of the existing island of unincorporated territory west of Clover Ridge Road NE, but would create two smaller islands.
- D2. The subject property's Clover Ridge Road frontage contains all public infrastructure improvements recommended by the City's various facility plans.

FINDINGS AND CONCLUSIONS
ZONING MAP AMENDMENT FILE ZC-02-11

The Albany Development Code (ADC 2.125-2.140) includes the following review criteria which must be met for this application to be approved. Code criteria are written in *bold italics* and are followed by findings and conclusions.

- (1) *The proposed base zone is consistent with the Comprehensive Plan map designation for the entire subject area unless a Plan map amendment has also been applied for in accordance with Section 2.080, ADC Article 2.*

FINDINGS OF FACT

- 1.1 Staff is recommending that the Zoning Map designation of the subject parcel be changed from Linn County UGA-UGM-20 (Urban Growth Management – 20-acre minimum lot size) to City of Albany RM (Residential – Medium Density).
- 1.2 The current Comprehensive Plan designation of the property where the Zoning Map amendment is proposed is Residential – Medium Density.
- 1.3 The Plan Designation Zoning Matrix in the Development Code (ADC 2.570) shows that the proposed RM zone is consistent with the Residential – Medium Density Comprehensive Plan Map designation.

CONCLUSION

- 1.1 This criterion is met because the proposed City zoning designation is compatible with the existing Comprehensive Plan designation on the subject property.
- (2) *Existing or anticipated transportation facilities are adequate for uses that are permitted under the proposed zone designation.*

FINDINGS OF FACT

- 2.1 The property where the map amendment is proposed is located on the west side of Clover Ridge Road approximately 700 feet north of Knox Butte Road.
- 2.2 The property has a structure that was a single-family house and is now being used as an office for the Grace Point Nazarene Church. The applicant is proposing to construct a church and associated parking lot on the subject property and the abutting parcel to the north. If the church is not built, a variety of other uses would be allowed in the proposed RM zone; including apartments or other multi-family development.
- 2.3 The property currently has direct access to Clover Ridge Road via a private driveway.
- 2.4 Clover Ridge Road is classified minor collector road in Albany's TSP and is improved to City standards with curb and gutter, sidewalks, and storm drainage improvements. The transportation system adjacent to the site conforms to Albany's adopted TSP and has an adequate level of infrastructure to support future development on the site as would be allowed in the proposed RM zone. This portion of the street is under the jurisdiction of the City of Albany. The speed limit is 25 miles per hour.

CONCLUSIONS

- 2.1 The transportation system adjacent to the site has an adequate level of infrastructure to support future development on the site under the RM zone.

2.2 This review criterion is met.

- (3) ***Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development within the subject area without adverse impact on the affected service area.***

Water

- 3.1 City utility maps show that a 12-inch public water main currently exists in Clover Ridge Road NE along the frontage of the subject property. There is also an 8-inch main that is stubbed to the west side of Clover Ridge Road approximately 15 feet north of the subject property's north boundary. The existing structure on the property is not connected to the public water system, but is served by a private well.
- 3.2 The City's *Water Facility Plan* (2004) shows no system deficiencies in this area. An existing system of large diameter water mains along Century Drive NE, Knox Butte Road NE, Clover Ridge Road NE, and Bernard Avenue NE/Somerset Avenue NE, covers the recommended facility plan projects for this area.

Sanitary Sewer

- 3.3 City utility maps show that an 8-inch public sanitary sewer main currently exists in Clover Ridge Road NE. There is also an 8-inch main that is stubbed to the west side of Clover Ridge Road at the northeast corner of the subject property. The existing structure on the property is not connected to the public sewer system, but is served by a private septic system.
- 3.4 The City's *Wastewater Facility Plan* does not show any collection system deficiencies downstream of the subject property.

Storm Drainage

- 3.5 Clover Ridge Road NE was improved to City standards by Linn County in 2004. A 15-inch public storm drainage main exists in Clover Ridge Road along the property's frontage. Burkhart Creek (south of the site) and Truax Creek (north of the site) are the main drainage features in this area. Storm drainage facilities in the recently reconstructed Clover Ridge Road NE collect stormwater from the road and adjacent parcels and carry the runoff to these creeks, or to smaller drainage features in the area.
- 3.6 The City's *Storm Drainage Master Plan* (1988) indicates that the subject properties lie entirely within the Burkhart Creek drainage basin. The Plan shows no capacity deficiencies within, adjacent to, or downstream of the subject parcels. The 1988 plan indicates that the main channel of Burkhart Creek is sufficient to carry the 100-year storm flows. Any future development on the subject property will be required to provide a drainage plan to show how stormwater runoff from the site will be collected and properly discharged to the public drainage system. It is likely that any development more extensive than a single-family house or duplex would be required to provide on-site detention of storm water.

Schools

- 3.9 This proposed zoning of the property would allow for multi-family development up to approximately 25 units per acre. The Greater Albany Public School system already serves this area, and a new school has recently been constructed in this vicinity. Any new residential development on the site would be obligated to pay school System Development Charges.

Police and Fire Protection

- 3.10 The Albany Police Department and Fire Department provide services to all development within the City of Albany. When a property is annexed, these departments will provide service to the property regardless of its zoning designation.
- 3.11 There are adequate public water facilities in this area for firefighting purposes.

CONCLUSIONS

- 3.1 The public sanitary sewer, water, and storm drainage systems in this area have the capacity to serve future development on the property that would be allowed in the RM zoning district.
- 3.2 This review criterion is met.
- (4) ***The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.***
- 4.1 The current zoning designation of the property where the Zoning Map amendment is proposed is UGA-UGM-20 (Urban Growth Management – 20-acre minimum lot size). The proposed zoning would result in approximately 1.50 acres of RM (Residential – Medium Density).
- 4.2 The subject property abuts property that is already zoned RM on the north and southwest. Other nearby property west of Clover Ridge Road that is currently in the County is expected to be zoned RM when it is annexed in the future. The RM zone allows for a variety of uses including multi-family development. The number of dwelling units in a multi-family development is typically determined by the size of the parcel, and the area required for parking, outdoor space, setbacks, etc.

CONCLUSIONS

- 4.1 This review criterion is met.
- (5) ***The land use and transportation pattern recommended in any applicable City-contracted or funded land use or transportation plan or study has been followed, unless the applicant demonstrates good cause for the departure from the plan or study.***

FINDINGS OF FACT

- 5.1 All public infrastructure is in place adjacent to the subject property, and has been constructed based on anticipated zoning, land uses, and transportation patterns for the area.
- 5.2 There is an existing single-family structure on the subject property. The applicant states that the house is being used as a temporary office for the Grace Point Nazarene Church. The applicant's plan to construct a church and associated parking would be considered under a Conditional Use permit in the proposed RM zone. The applicant is not certain whether the existing building will be retained as part of the church development. If it is to remain, then it would need to be considered as part of the Conditional Use application for the church.

If for some reason the church development were not to occur, then the existing office use would not be allowed in the RM zone. To protect the city from this possibility, the applicant has agreed to have the use of the structure revert back to single family use if the church is not constructed. The applicant is requesting that the same December 1, 2014 deadline be used for this issue. Therefore, by December 1, 2014, either the existing structure must be removed from the site, or a conditional use permit application

for use as a church office must be submitted to the City by December 1, 2014. If neither of these occurs by the deadline, then the structure must revert back to a single family dwelling.

CONCLUSION:

- 5.1 With the applicable language in the attached Annexation Agreement (see Staff Report Attachment E), this review criterion is met.

(6) **RELEVANT GOALS AND POLICIES**

The following Comprehensive Plan goals and policies are relevant in considering whether the proposed RM (Residential – Medium Density) zoning designation best satisfies the Goals and Policies of the Comprehensive Plan. Goals and policies are listed below in *bold italic* print, followed by findings of fact and conclusions.

GOAL 1: CITIZEN INVOLVEMENT

Goal: Ensure that local citizens and other affected groups, neighborhoods, agencies, and jurisdictions are involved in every phase of the planning process.

Policy 2: When making land use and other planning decisions:

- a. ***Actively seek input from all points of view from citizens and agencies and assure that interested parties from all areas of the Urban Growth Boundary have the opportunity to participate.***
- b. ***Utilize all criteria relevant to the issue.***
- c. ***Ensure the long-range interests of the general public are considered.***
- d. ***Give particular attention to input provided by the public.***
- e. ***Where opposing viewpoints are expressed, attempt to reach consensus where possible.***

Policy 3: Involve the general public in the use, evaluation, and periodic review and update of the Albany Comprehensive Plan.

Policy 4: Ensure information is made available to the public concerning development regulations, land use, and other planning matters, including ways they can effectively participate in the planning process.

- 6.1 The City of Albany's Comprehensive Plan and Development Code provide requirements for citizen involvement in the decision-making process for Annexations and Zoning Map amendments. Annexations and Zoning Map amendments are processed as Type IV land use decisions with notice to affected parties, including surrounding property owners and affected government agencies. Public hearings before the Planning Commission and City Council are held. Notice of the public hearings is posted on the subject property. The City's Comprehensive Plan and Development Code, including the processes for citizen involvement, have been acknowledged by the Land Conservation and Development Commission (LCDC) as consistent with statewide planning goals.
- 6.2 People who are notified of the public hearing are invited to submit comments or questions about the application prior to the hearing or at the hearing. Review of the application is based on the review criteria listed in the Development Code. The purpose of the public hearing is to provide the opportunity for people to express their opinion about the proposed changes, and where opposing viewpoints are expressed, to try to reach consensus. The Planning Commission and City Council facilitate this process at the public hearings.

GOAL 5: OPEN SPACES, SCENIC & HISTORIC AREAS, & NATURAL RESOURCES

VEGETATION AND WILDLIFE HABITAT

Goals:

- 1. Ensure native vegetation remains an integral part of Albany's environment.*
- 2. Protect and enhance significant wildlife habitat in the urban growth boundary.*
- 3. Balance compact development patterns with natural resource protection.*

Policy 1: Protect existing vegetation, which possesses significant environmental, wildlife habitat, and aesthetic qualities, particularly along the Santiam Canal and the Willamette and Calapooia Rivers, their tributaries, and associated floodplains and drainageways.

Policy 2: Encourage the protection of trees of significant size that represent a visual and aesthetic resource to the community and recognize that the vegetation resources of Albany's Historic Districts are an important element of Albany's historic and cultural heritage.

Policy 3: Where possible, retain the environmental and aesthetic qualities of existing wooded areas by incorporating them into public park and open space plans, and ensure the maximum preservation of vegetation during the development review and construction process.

- 6.3 *Comprehensive Plan Plate 3: Natural Vegetation and Wildlife Habitat, shows no areas of significant vegetation and/or wildlife habitat on the property.*

GOAL 5: WETLAND RESOURCES

Goal: Protect wetlands to ensure their continued contribution as natural areas, open space, wildlife and vegetative habitat, and storm water retention and conveyance.

- 6.4 *Comprehensive Plan Plate 6: Wetland Sites, does not show any wetlands on the property. The National Wetlands Inventory and the East I-5 Wetlands Inventory and the Goal 5 Natural Resources overlay show no wetlands on the property. A small sliver of riparian corridor overlay exists on the southeast corner of the subject property. Any future development on the property must either avoid the overlay area, or submit for a Natural Resource Impact Review permit and comply with the standards in Article 6 of the Albany Development Code.*

GOAL 10 HOUSING

Goal: Provide a variety of development and program opportunities that meet the housing needs of all Albany's citizens.

Policy 1: Ensure that there is an adequate supply of residentially zoned land accessible to employment and public services.

Policy 6: Encourage residential development on already serviced and vacant residential lots or in areas within which services are available or can be economically provided.

- 6.5 The subject property is located in an area that is accessible to employment and public services.
- 6.6 All city services are available to serve a residential development in this area.

GOAL 12: TRANSPORTATION

Goals:

- 1. Provide an efficient transportation system that provides for the local and regional movement of people and goods.***
- 2. Provide a safe transportation system.***
- 3. Provide a diversified transportation system that ensures mobility for all members of the community and provides alternatives to automobile travel.***
- 4. Provide a transportation system that balances financial resources with community livability and economic vitality.***

Policy 1: Develop a transportation system with improved connectivity where “barriers” such as I-5, railroad, waterways, or neighborhoods reduce transportation system efficiency in terms of travel time and travel distance.

Policy 2: Maintain acceptable roadway and intersection operations where feasible considering environmental, land use, and topographical factors.

Policy 3: Identify and remedy unsafe intersection and roadway locations with known safety issues and ensure the multi-modal transportation system is structurally and operationally safe.

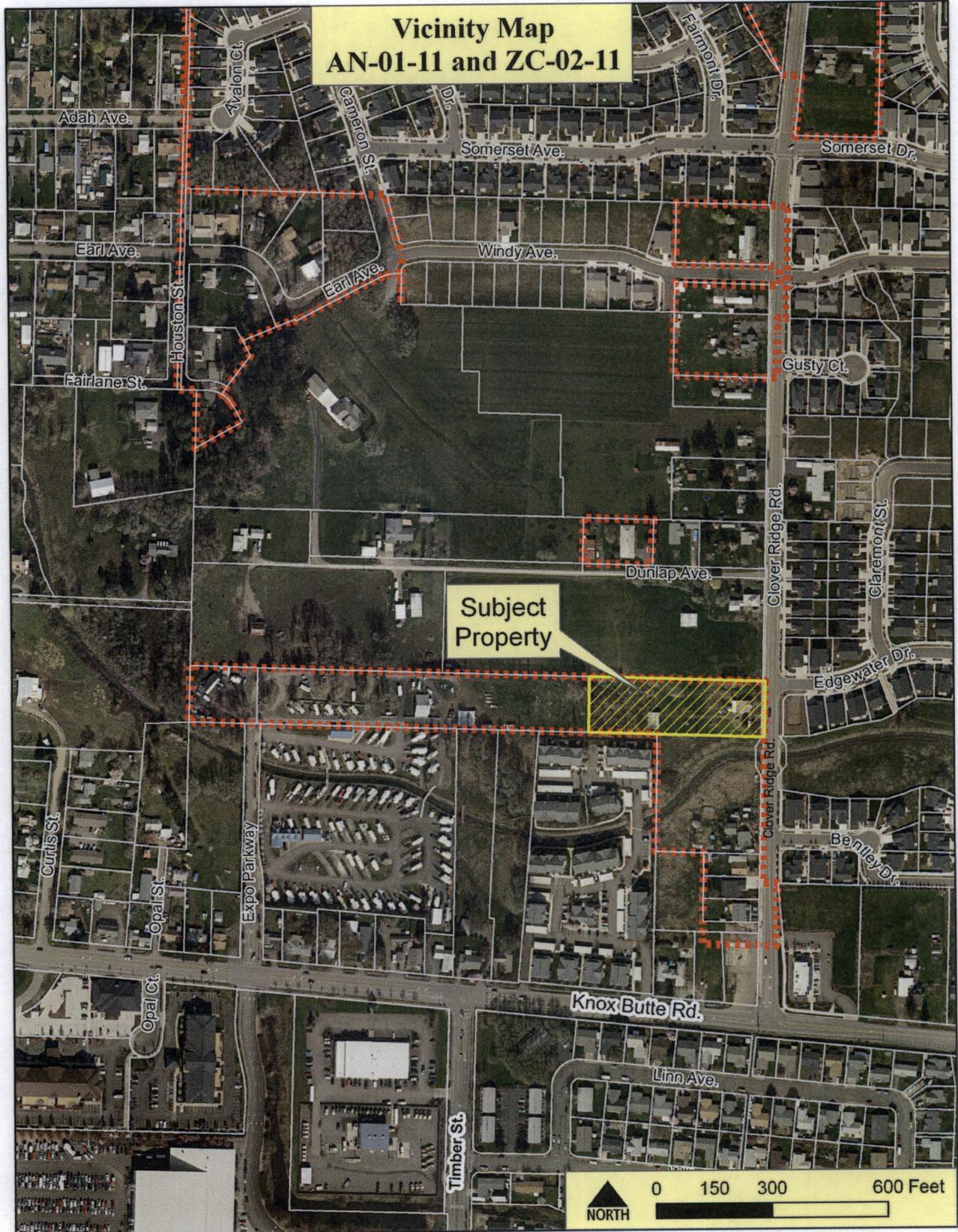
Policy 4: Minimize conflicts along high volume and/or high speed corridors.

- 6.7 See the discussion under Zoning Map Amendment Review Criterion (2). The discussion finds that the transportation system is or can be made adequate for allowed development on the property. To avoid repeating the same information here, those findings and conclusions are included here by reference.

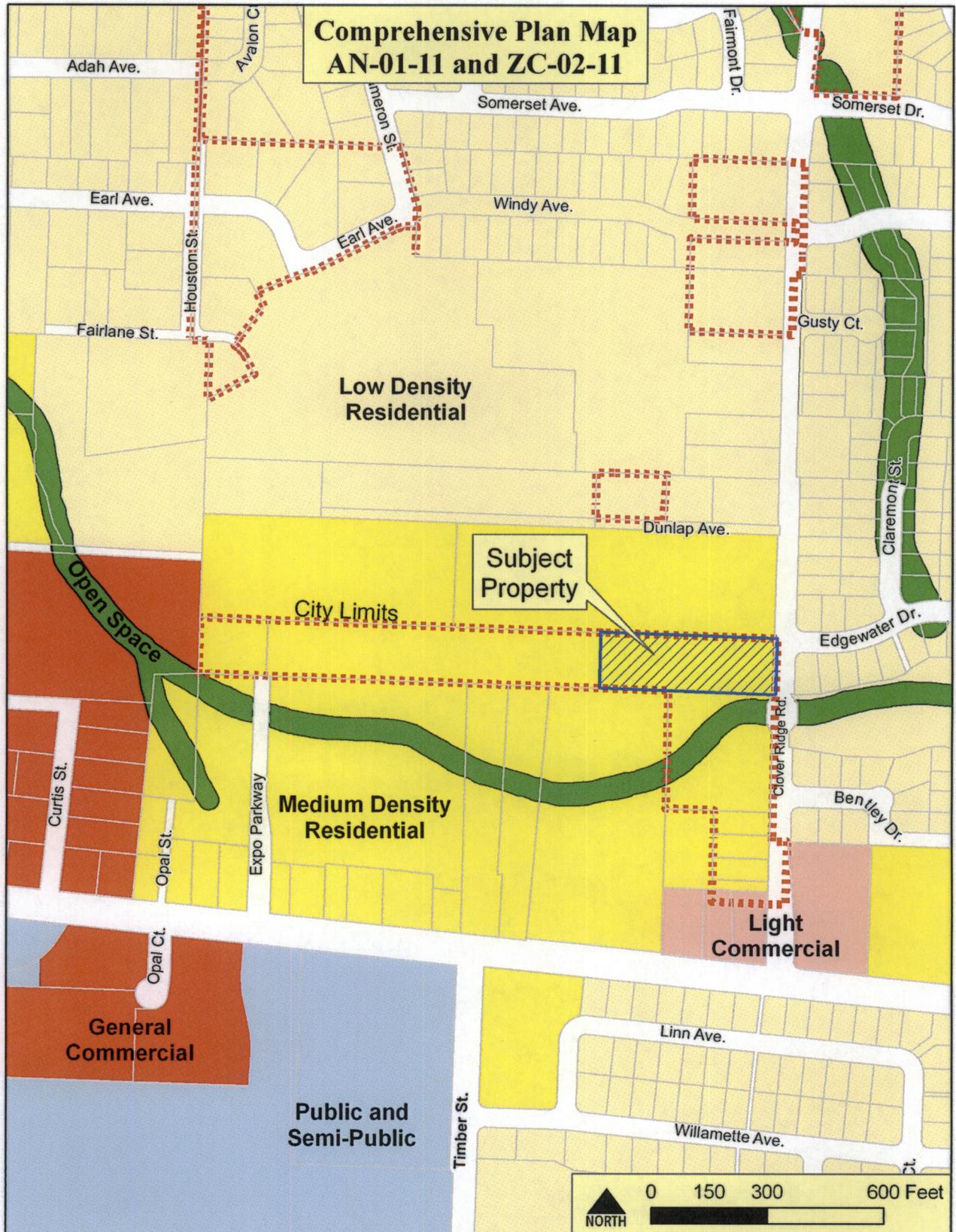
ATTACHMENTS

- Attachment A: Vicinity Map
- Attachment B: Comprehensive Plan Map
- Attachment C: Zoning Map
- Attachment D: Natural Resources Map
- Attachment E: Annexation Agreement

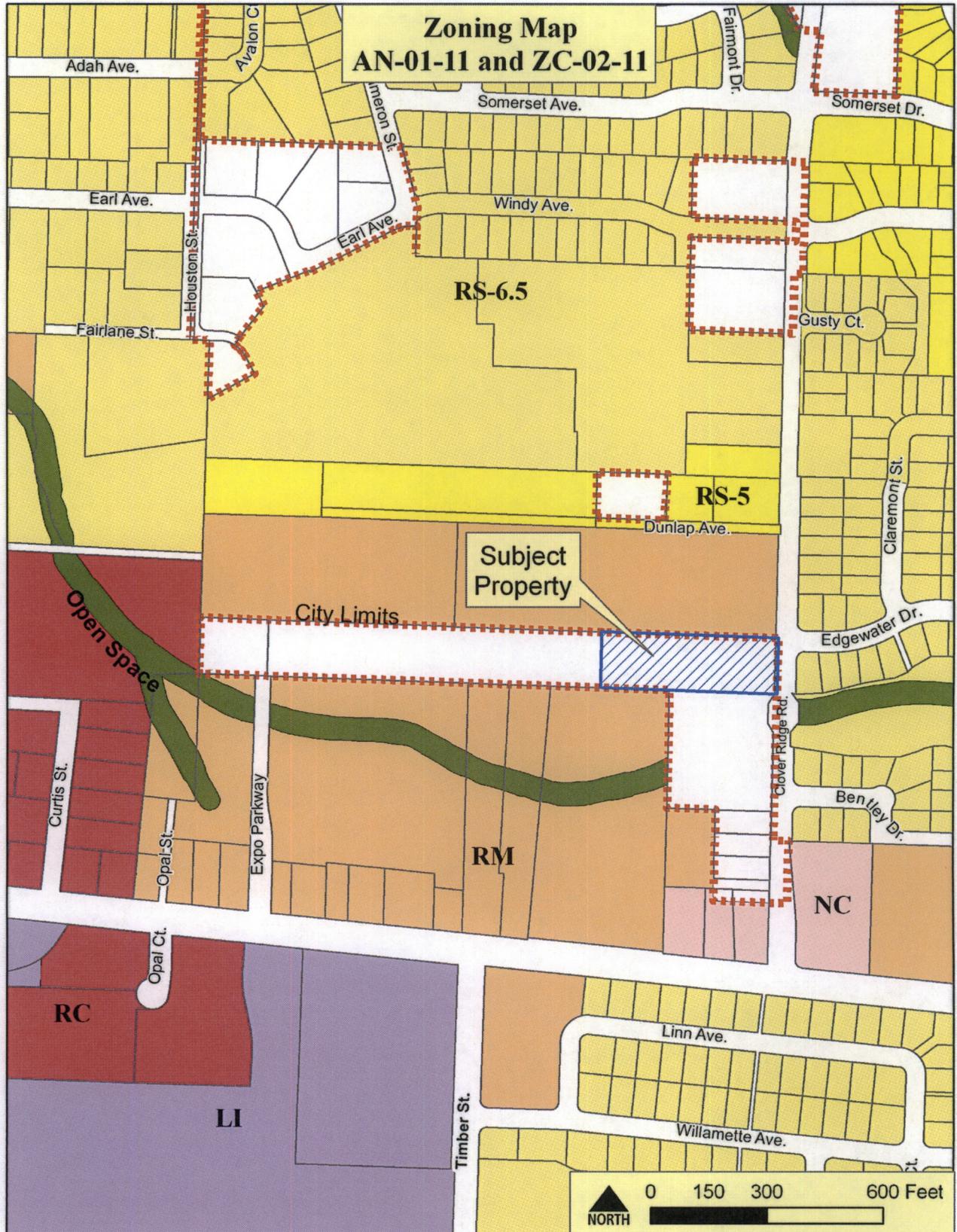
STAFF REPORT ATTACHMENT A
FILES: AN-01-11 AND ZC-02-11



STAFF REPORT ATTACHMENT B
FILES: AN-01-11 AND ZC-02-11



STAFF REPORT ATTACHMENT C
FILES: AN-01-11 AND ZC-02-11



STAFF REPORT ATTACHMENT D
FILES: AN-01-11 AND ZC-02-11



STAFF REPORT ATTACHMENT E

ANNEXATION AGREEMENT

EFFECTIVE DATE: Upon approval of Albany City Council

PARTIES: GRACE POINT NAZARENE CHURCH
210 Clover Ridge Road NE
Albany, OR 97322

Individually and Together ("Developer")

CITY OF ALBANY, OREGON, a municipal corporation ("City")

IN WITNESS WHEREOF, the Grantor has executed this instrument this _____ day of February, 2012.

STATE OF OREGON, County of Linn)ss.

This instrument was acknowledged before me on _____ day of February, 2012, by _____.

NOTARY PUBLIC FOR OREGON

RECITALS:

WHEREAS, Developer owns certain real property outside of and adjacent to City and described in Attachment 1 and shown in a map labeled Attachment 2 attached hereto (the "Property"), which they desire to be annexed to the City, and the City desires to put the annexation proposal on the ballot for approval of voters in accordance with Oregon law and the City Charter;

WHEREAS, City does not want annexation to impose express or implied obligations on the City to make and fund infrastructure improvements;

WHEREAS, prior to approving the proposal for the ballot, City staff has requested that Developer enter into an Agreement which will waive many of Developer's rights and remedies with regards to conditions that may be placed on development of the Property by City if public facilities are insufficient to support the development and which will commit Developer in good faith to make certain enhancements and observe restrictions concerning the Property at such time that the actual development of the Property begins;

WHEREAS, the City has the policy of not placing annexation proposals on the ballot unless the Council first determines that the annexation is timely and reasonable;

WHEREAS, among the factors considered by the Council in its timeliness determination is the adequacy of public infrastructure to serve the proposed annexation site;

WHEREAS, the Developer may choose to demolish the existing structure on the subject property to make way for a future parking lot for a church to be built on the abutting property to the north, and is requesting that they not be required to immediately connect said structure to public sewer and water facilities because of the potential demolition;

WHEREAS, if the existing structure on the subject property is to remain on the site after December 1, 2014 for any reason, the City will require that it be connected to City sanitary sewer and water facilities, and the private septic system abandoned;

WHEREAS, the existing use of the structure on the subject property as a church office is only allowed in the proposed RM zoning designation with a conditional use permit approval;

WHEREAS, the Parties do not intend that this Agreement be a land use document or comply with the requirements of a Development Agreement as set forth in ORS 94.504 to 94.528;

WHEREAS, nothing in this Agreement limits the use of the Property for any lawful purposes, so long as any required City approval has been obtained;

WHEREAS, nothing in this Agreement shall require Developer to develop the Property or prohibit Developer from stopping any development after it has begun.

AGREEMENT:

NOW, THEREFORE in consideration of the above Recitals and the mutual promises contained herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement as if set forth herein in full.

2. **Location.** The Property is adjacent to the City Limits of the City of Albany and within the Urban Growth Boundary for the City of Albany.
3. **Term.** The term of this Agreement shall commence on the date upon which it is approved by the Albany City Council and shall continue until superseded or terminated by the mutual agreement of the Parties or shall terminate upon rejection of the proposed annexation by the voters of the City. The Parties may enter into individual agreements, including, but not limited to, Development Agreements, at any future date, which agreements will supersede this Agreement as applied to the Property as a whole or to portions of the Property or individual phases of development, as specified in said future agreements.
4. **Definitions.** For purposes of this Agreement, specific terms shall be defined as follows:
 - 4.1. *"Public Facilities"*. Physical infrastructure necessary or beneficial to the development of real property in the City of Albany. Such facilities include, but are not limited to, streets, curbs, gutters, bridges, culverts, intersections, traffic signals, signage, ditches, piping, valves, pump stations, landscaping, trails, bicycle paths, parks, sewer, storm sewer, and/or water facilities.
 - 4.2. *"Development"*. The meaning prescribed for said term at Albany Municipal Code 20.22.010.
 - 4.3. *"Developer"*. Any person or legal entity having the right or responsibility to control the development of the Property. This term includes, without limitation, all owners of property proposed for development.
5. **Ballot.** The Property shall be proposed to the voters of the City of Albany for annexation subject to the terms of this Agreement.
6. **Waiver of Rights and Indemnification.** If Developer proceeds with development of the Property, Developer agrees that if the City determines, in the exercise of reasonable discretion, based on substantial evidence in the record, that Public Facilities are insufficient to support a proposed development, and there is a reasonable relationship between any condition or denial and said deficiency in Public Facilities, and the City therefore conditions or denies an application based on such a determination:
 - 6.1 Developer will waive the right to claim that such condition or denial constitutes a moratorium under ORS 197.505 to 197.540.
 - 6.2 Developer will waive any right to seek judicial or administrative relief including, but not limited to, claims for injunction or damages that may result from the delay or denial of development opportunities.
 - 6.3 Developer will waive any claim under any present or future legislation, judicial determination, or Oregon Constitutional amendments that require local government to compensate a property owner for damages which result from governmental regulations which are deemed to constitute a complete or partial taking of such property.
 - 6.4 Developer waives any right to appeal said condition or denial or to seek any other form of judicial or administrative relief, on the grounds that it places a "disproportionate burden" on Developer. This waiver is intended to include, but not be limited to, claims that the disproportionate burden constitutes a partial or complete taking of Developer's property. This waiver shall relieve City of any requirement to make individualized findings that justify a condition on the proposed development or a denial of the proposed development, but the condition or denial must be directly related to a deficiency in Public Facilities caused or contributed to by the proposed development.
 - 6.5 Developer waives any right to claims arising under or granted by any statutory or constitutional regulatory compensation or waiver provisions, including but not limited to Ballot Measure 37

(2004) or otherwise enacted after the date of this proceeding which would create a right of claim for compensation or waiver from city land use regulations that exist upon the effective date of the proceeding and which, by the approval of the proceeding, are then applicable to the property.

- 6.6 None of the rights waived by Developer shall waive Developer's right to just compensation in the event that the City initiates eminent domain proceedings to acquire all or a part of Developer's property.
- 6.7 The Developer and its successors and assigns agree to indemnify and hold harmless the City of Albany, its agents, officers, and employees, from any of the following claims including, but not limited to, the attorney's fees and other expenses incurred by the City resisting said claims:
 - 6.7.1 Any claim challenging the enforceability or binding nature of this Agreement;
 - 6.7.2 Any judicial or administrative proceeding which is brought by Developer or its successors or assigns challenging the correctness or any action taken by the City which is authorized under the terms of this Agreement;
 - 6.7.3 Any other proceeding of any kind or nature wherein Developer or its successors or assigns seeks damages or injunctive relief as a result of any City decision to deny, condition, or limit development activities.

7. Developer Agrees.

- 7.1 To provide the City with a Promissory Note in the amount of \$4,452 (cost of Sewer and Water System Development Charges) before the February 8, 2012 City Council public hearing. If the existing structure on the subject property is removed before December 1, 2014, then the City will return the Promissory Note to the Developer. If the existing structure is not removed before December 1, 2014, the City will require that the structure be connected to City sewer and water facilities and will call on the Promissory Note to pay for the necessary System Development Charges for these connections. (Developer must pay any other fees and charges required for said utility connections at the time building permits are issued for the connections.)

If the existing structure is not removed from the subject property before December 1, 2014, Developer agrees as follows:

- 7.2 The structure on the subject property must be connected to the public sanitary sewer and water systems, and all associated fees and charges (e.g., System Development Charges, connection charged, installation fees, etc.) paid for said connections; the private septic system must be abandoned according to State and County regulations; and, the private well must be abandoned, or an approved backflow prevention device must be installed at the back of the water meter at the property line;
- 7.3 To discontinue the office use of the property and revert it to a single-family dwelling; or, submit a land use application for the proposed use of the building by December 1, 2014, and receive land use approval of said application from the City by June 1, 2015.

8 City Agrees. The City, in consideration for the promises made by Developer, agrees as follows:

- 8.1 There are currently sufficient Public Facilities available to annex the property into the City of Albany upon approval of the voters. This does not imply that available Public Facilities are sufficient for any particular development.

- 8.2 The City shall not impose a Local Improvement District or other financial obligation upon Developer unless it is determined that the Developer benefits from the proposed improvement(s).
- 8.3 While the City's conditions or denials may place a disproportionate burden on the Developer to make Public Facilities improvements, any such conditions or denials shall be reasonably related to the Public Facilities needs which result from development on the Property. "Objective Engineering Standards" will be used to determine the need for Public Facilities which result from any proposed development. Notwithstanding the foregoing, both Parties agree that the Public Facilities needs of third parties or the public generally may also be a contributing factor to the Public Facilities needs which result from development on the Property. The needs of such third parties or the public shall not limit the City's discretion to impose conditions or denials on the Developer.
- 8.4 Subject to the provisions of this Agreement, the City agrees that upon annexation, and subject to the terms and limitations of this Agreement, the Property shall enjoy the same right to development as applies to similarly situated property in the City of Albany. This is a material consideration for the Developer to comply with the conditions and requirements set forth in this Agreement.
- 8.5 City shall make a good faith effort to identify and address planning issues and impacts that may arise as a result of development of the Property and will share with Developer any information of prospective issues or impacts.
- 8.6 Subject to the provisions of this Agreement, Developer has full entitlement to apply for development of all or any part of the Property and shall be entitled to the same consideration shown to similarly situated applicants.
8. **Contingency.** This Agreement is expressly contingent on (i) approval by the Albany City Council of the annexation proposal and this Annexation Agreement, and (ii) approval by the voters in accordance with Oregon law of such annexation proposal.

9. **Miscellaneous.**

- 10.1 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and permitted assigns and upon approval of the voters of the City of Albany, the terms of this Agreement shall be recorded in a form approved by the City so as to provide a record of this Agreement to run with the land described in the attached Attachment 1.
- 10.2 **Assignment.** Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any party without the prior written consent of the other Parties, which consent will not be unreasonably withheld.
- 10.3 **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person, other than the Parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.
- 10.4 **Further Assurances.** Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, in order to carry out the intent and accomplish the purposes of this Agreement.
- 10.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict-of-laws principles.

- 10.6 **Attachments.** The Attachments referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.
- 10.7 **Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect of the remaining provisions of this Agreement shall not be in any way impaired.
- 10.8 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreement, whether written or oral, among the Parties with respect to such subject matter.
- 10.9 **Covenant Running with the Land.** All developer obligations shall be covenants running with the land.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement.

PARTIES:

CITY OF ALBANY.

A municipal corporation,

By: _____

Its: _____

GRACE POINT NAZARENE CHURCH

By: _____

Its: _____

State of Oregon
County of Linn;

This instrument was acknowledged before me on _____ by _____
(date) (name(s) of person(s))

NOTARY PUBLIC OF OREGON

ANNEXATON AGREEMENT ATTACHMENT 1
LEGAL DESCRIPTION
FILE AN-01-11

A tract of land located in the Southwest one-quarter of Section 4 in Township 11 South, Range 3 West, Willamette Meridian, Linn County, Oregon that is more particularly described as follows:

Beginning at a point on the current city limits boundary of the City of Albany, said point being located South 00°16' West 550.44 feet and North 89°39' West 1609.87 feet and South 00°16' East 1376.83 feet and North 89°39' West 20.0 feet from the Northeast corner of the Robert Houston Donation Land Claim No. 38 in said township and range; thence North 89°39' West 450.62 feet to the southeast corner of that tract described in Linn County Microfilm Deed Records MF293-93; thence North 00°16' West along the east line of said tract a distance of 145.0 feet to the south line of that tract described in Linn County Microfilm Deed Records Volume 164, Page 212; thence South 89°39' East along said south line a distance of 450.62 feet to the current city limits boundary of the City of Albany; thence South 00°16' East along said city limits boundary a distance of 145.0 feet to the Point of Beginning.

Said area containing 1.50 acres, more or less.

**ANNEXATON AGREEMENT ATTACHMENT 2
LEGAL DESCRIPTION MAP
FILE AN-01-11**

